

ADVISORY OPINION NO. 2001-29

Issued On September 6, 2001 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **City Council** asks whether its Members may vote on a matter which affects the company by which they are employed or from which they are receiving retirement benefits.

FACTS RELIED UPON BY THE COMMISSION

Several of the City's Council Members are associated, as employees or retirees, with the community's largest employer. That company is experiencing financial difficulties and has petitioned Council for relief from some of its financial obligations to the City. The relief sought is financially significant and may be crucial to the company's continued financial independence.

The Council asks whether those members who are employed by the company, or receive retirement benefits from it, may take part in Council's discussion and vote on the company's petition.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code §6B-1-2(c) provides that ... certain conflicts of interest are inherent in part-time service and do not, in every instance disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding or acting on a matter.

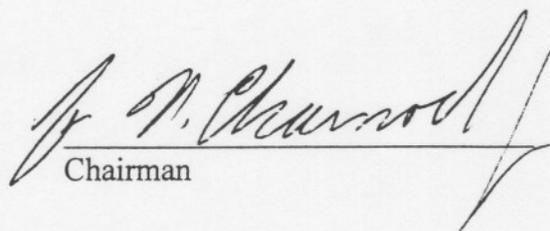
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WV Code §6B-1-2(c) makes it clear that public officials should not take official action on matters which are personal to them, but should seek to be excused from voting, recused from deciding or acting on such matters.

The Commission's legislative rules VOTING, 158-9-2.2 provides that a matter is personal to a public servant " ... when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety."

The Ethics Commission has repeatedly ruled that public servants have a pecuniary interest in the financial affairs of their employers and that is the Commission's ruling here. Therefore, it would be a violation for the company's employees or retirees serving on City Council to take part in the discussion or vote on the company's petition for financial relief.

The Commission's legislative rules on voting further provide at 158-9-2.3 "For a public official's or public employee's recusal to be effective, it is necessary for the official or employee to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during that period, fully disclose his interest, and recuse himself from voting on the issue."


Chairman